

Albany

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
LEON S. SAVARIA, et ux,)
Appellants,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and)
THOMAS D. LASATER,)
Respondents.)

PCHB No. 77-20

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

PER W. A. GISSBERG:

This appeal came on for a formal hearing before the Pollution Control Hearings Board, W. A. Gissberg (presiding) and Chris Smith on April 6, 1977 in Yakima, Washington. Savaria, hereinafter appellant, challenges the validity of a permit for ground water appropriation issued by the Department of Ecology to Lasater, hereinafter respondent.

Appellants Savaria were represented by their attorney Reed Pell; respondent permittee Lasater appeared pro se; respondent Department of Ecology was represented by Robert E. Mack, Assistant Attorney General.

1 Having heard the testimony and examined the exhibits and being fully
2 advised, the Board makes and enters the following

3 FINDINGS OF FACT

4 I

5 Respondent Lasater purchased 27.75 acres of farmland in Wenas Valley,
6 Yakima County, in February, 1976, and has planted 20 acres of alfalfa and
7 the remainder is pasture. His land is part of an original 68-acre tract
8 owned by one Carl Longmire to which two ground water and one surface water
9 permits are appurtenant for irrigation. During the summer of 1976
10 respondent drew water from "Bryce Ditch" whose source was from Longmire's
11 irrigation and a natural stream. Since that source of water was
12 insufficient and unreliable for respondent's needs, he applied for a permit
13 for ground water appropriation of 300 gallons per minute (g.p.m.), and
14 Department of Ecology (DOE) granted a permit for 270 g.p.m.

15 II

16 Appellant has 174 acres of land adjacent to respondent's farm which
17 are irrigated by two wells which are prior in right (1929); "believes"
18 there is another well and uses a fourth well for domestic purposes. At
19 any event, appellant's concern is that since the site of the respondent's
20 proposed well is within 1,200 feet of appellant's prime well, it will be
21 detrimentally affected in light of the drought conditions existing in
22 the Yakima area and elsewhere to the extent that his water source will be
23 lost and/or that he will not be assured of a reasonable and feasible
24 pumping lift.

25 III

26 The wells of appellant, Longmire, and Lasater are all in the same

27 FINAL FINDINGS OF FACT,
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1 sediments of the Ellensburg formation and draw from the same aquifer.
2 While no wells in the area have been drilled in the underlying basalt
3 formation, there have been no reports to the DOE, and it has no knowledge
4 of any decline of the static water levels notwithstanding the fact that
5 wells have been in production for many years. The pumping has not exceeded
6 the annual recharge of the aquifer system. Appellant does not know the
7 static water level of his well which was drilled to a depth of 531 feet
8 and is about one-half mile distant from respondent's proposed well. The
9 DOE has not determined what would or would not be a reasonable and
10 feasible pumping lift.

11 IV

12 The severe drought of 1977 will probably not adversely effect the
13 well water levels for this year but could in future years. While a
14 direct hydraulic relationship will exist between the proposed well and
15 that of appellant, the drawdown on appellant's well, and hence its
16 pumping lift, will be only slightly increased by an estimated two feet.
17 At any event, the proposed well will have a lower priority than any of
18 those of appellant and, if appellant's well experiences a drawdown
19 which threatens a safe sustaining yield, respondent would be required
20 to cease or curtail the use of his well under the terms of his permit.

21 V

22 Any Conclusion of Law hereinafter stated which may be deemed
23 a Finding of Fact is hereby adopted as such.

24 From these Findings the Pollution Control Hearings Board comes
25 to these

26 }
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I

3 Water is available for appropriation; it will be applied to a
4 beneficial use, and will not impair existing rights nor detrimentally
5 affect the public welfare. RCW 90.44.060 and RCW 90.03.290.

6 II

7 In addition to the foregoing statutory standards by which ground
8 water permits are to be granted, or denied, chapter 90.44.070 RCW
9 further provides that:

10 No permit shall be granted for the . . . withdrawal of
11 public ground waters beyond the capacity of the underground
12 bed . . . or locality to yield such water within a reason-
13 able or feasible pumping lift . . . The supervisor of water
resources shall have the power to determine whether the
granting of any such permit will injure or damage any vested
or existing right or rights under prior permits

14 Where there is no detrimental effect on a prior water right, the fore-
15 going provision does not require the DOE to make a prior determination
16 of the range of reasonable or feasible pumping lifts for an area.
17 However, when there is evidence of a substantial, cumulative increase
18 in the pumping lift from a ground water body, the DOE must determine
19 such a range.

20 Since appellant himself does not know, with respect to his well, the
21 depth of the pump setting, the static water level or pumping level, we
22 conclude that where the only evidence is that the pumping lift will be
23 increased by a mere two feet, there is no detrimental effect and the
24 permit does meet the requirements of the foregoing statute.

25 III

26 The permit should be affirmed and the appeal dismissed.

27 FINAL FINDINGS OF FACT,
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IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The permit is affirmed and the appeal is dismissed.

DATED this 12th day of April, 1977.

POLLUTION CONTROL HEARINGS BOARD

W. A. Gissberg
W. A. GISSBERG, Chairman

Chris Smith
CHRIS SMITH, Member